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October 22, 2003

Rhonda L. Vosdingh
Associate General Counsel
Enforcement
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463-0001

Attn: April J. Sands, Esq.
Office of General Counsel

Re: **MUR 5357/Centex Corporation (Robin McGlothern)**

Dear Ms. Sands:

This submission is in response to the complaint Centex Corporation has filed with the Federal Election commission ("FEC") regarding possible violations of Title 2 U.S.C. Section 441(f), and the Federal Election Campaign Act of 1971 as amended (the "Act"), at a Centex subsidiary called Centex-Rooney Construction Company Inc. ("Rooney"), and the correspondence from the FEC dated September 24, 2003, advising that the FEC has found reason to believe violations of Section 441(f) have occurred.

Robin McGlothern is married to D.J. McGlothern, who was formerly employed by Rooney during the time period addressed in the company's complaint to the FEC.¹ Mrs. McGlothern first received notice from the FEC that she was implicated by Centex's complaint and subject to legal findings when she received the September 24, 2003 correspondence. Accordingly, this correspondence is Mrs. McGlothern's first opportunity to be heard, and first submission to the FEC, in connection with this matter. Also submitted in support of this response is a sworn affidavit of Mrs. McGlothern.

Based upon the facts set forth below, which were apparently not available to the FEC when it reached its preliminary finding, we respectfully request that the FEC revisit the finding of "reason to believe" and urge that the Commission now conclude that there is no reason to believe a violation of the Act occurred with regard to Mrs. McGlothern, and determine that no action should be taken against Mr. McGlothern on the basis of the instant complaint.

¹ Mr. McGlothern will separate from employment with Rooney in or about October 2003.

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
WASHINGTON, DC 20463

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Introduction

Robin McGlothern has served in law enforcement for virtually her entire professional life. She has been employed by the Federal Bureau of Prisons for approximately fifteen (15) years. Mrs. McGlothern is presently a Senior Investigator assigned to a federal penitentiary in Florida, that is part of the Coleman Federal Correctional Complex. Prior to her employment with the Bureau, she worked for the State Department of Corrections. Before that, she was employed by a State's Attorney's office in South Florida.

Mrs. McGlothern has been married to D.J. McGlothern for ten years and has two children and two step-children. She is active in her community as an adult leader with the 4-H Youth Organization and has participated in the construction of a home for a less privileged family as part of Habitat for Humanity. In addition, Mrs. McGlothern occasionally makes political contributions to the campaigns of candidates in whom she believes. She has never been reimbursed for any political contribution.

The Complaint/Background

In January 2003, the CEO of Centex directed its General Counsel to undertake an investigation into whether or not employees of Rooney may have been reimbursed with corporate funds for individual political contributions. Thereafter Centex retained the law firm of Arnold & Porter to assist in this investigation. The instant complaint contains the results of the Arnold & Porter investigation.

Rooney is a long-standing construction company with an excellent reputation which operates in and outside of the State of Florida. Bob Moss joined Rooney in 1986 as Chairman, President and CEO. In 2000, Mr. Moss was promoted to the position of Chairman and CEO of Centex Construction Group. Mr. Moss remained as Chairman at Rooney. Gary Esporin joined Rooney around the same time as Mr. Moss and served as CFO of Rooney. Mr. Esporin was promoted in 2000 to co-CFO of Centex Construction Group but retained his position at Rooney. Mr. Esporin reported directly to Mr. Moss.

Rooney employees participated in several incentive compensation plans that paid bonuses to employees. A percentage of the bonus pool was reserved for discretionary bonuses. Mr. Moss and Mr. Esporin handled the bonus process. Mr. Moss reviewed and set the discretionary bonuses for the Rooney employees.

Rooney employees were encouraged to be active in their community affairs, including attending and participating in political fund-raisers, and making political and charitable contributions as part of Rooney's emphasis on relation-building and marketing.

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Mr. Moss and Mr. Esporin asked employees to keep them informed about these kinds of activities, including reporting the amounts of political contributions and to whom they were made.

It turns out that Mr. Esporin kept track of contributions and calculated amounts that would reimburse employees for contributions, "grossing up" the amounts to offset tax liability. These calculations were set out on spread sheets Mr. Esporin maintained and apparently used when employee annual bonuses were determined. Centex and Arnold & Porter have concluded that contained within the large discretionary incentive compensation bonuses which some Rooney employees received were amounts that reimbursed for contributions made. The bonus checks did not show that this had occurred. Moreover, the Esporin spreadsheets were not shared with Rooney employees.

The complaint does not ascribe any conduct relating to this matter to Robin McGlothern. In fact, the complaint does not mention her.² Nevertheless, the FEC in its September 24, 2003 correspondence to Mrs. McGlothern, states that she made \$300.00 in federal political contributions for which her spouse "was apparently reimbursed using the discretionary management bonus scheme." The basis on which the FEC reaches this preliminary finding remains unclear. As such, we respectfully suggest that the FEC reconsider this preliminary finding, as it appears erroneous.

Centex/Rooney

Centex and Rooney are highly regarded companies with no history of improper behavior. The companies maintain high ethical standards and have clear policies that business is conducted in accordance with both the letter and the spirit of all applicable laws. Rooney employees tend to stay at the company. Its executive officers have all been with Rooney for many years. D.J McGlothern was a dedicated employee committed to doing his job in an appropriate and professional manner and who remains proud of his accomplishments while employed by Rooney. Mr. McGlothern was not a Rooney executive officer and was not a participant in any discretionary executive bonuses.

Robin McGlothern was never employed by Rooney or any affiliated company.

² The complaint indicates that Mrs. McGlothern's husband received reimbursement from another Rooney employee for Mr. McGlothern's political contributions in the amount of \$1,000.00.

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Relevant Law

Pursuant to Section 441f of Title 2 of the Act, "no person shall make a contribution in the name of another or knowingly permit his name to be used to effect such a contribution..." Commission regulations made explicit that the prohibitions of Section 441f apply to individuals who help or assist in the making of contributions in the name of another. 11 C.F.R. § 110.4(b).

Pursuant to 2 U.S.C. § 441b, a corporation may not make a contribution in connection with the election of a candidate for federal office.

In determining if and how to proceed with possible violations of the Act, the Commission looks at whether any violations in fact occurred and whether the violations of law are knowing and willful. When Congress amended the Act in 1976 to centralize the criminal penalties for violations of the Act, it was concerned about the complexity and technical nature of the statute and the potential that non-culpable people could be caught up in apparent violations of law. See 122 Cong. Rec 8577 (March 30, 1976 statement of Representative Rostenkowski). During the House debates on the Conference Report for the 1976 Amendments, Congressman Hays stated that the phrase "knowing and willful" referred to "actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec H 3778 (May 3, 1976 remarks of Congress Hays).

This strict and liability-limiting notion of what constitutes knowing and willful acts has been adopted by the Courts. See e.g., Federal Election Commission v. Friends of Jane Harman, 59 F. Supp 2d 1046 (C.D. Calif. 1999); Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F. Supp 985 (D.N.J. 1986).

Pertinent Facts

Robin McGlothern sometimes contributes to federal political campaigns. Mrs. McGlothern bases her political contributions on her personal belief in the candidacy of the candidates. She has never been reimbursed for federal political contributions that she has made. No one indicated to her that she would be reimbursed for making political contributions and she did not receive reimbursement. The contributions she makes are her personal contributions and not made on behalf of any other person.

We submit that the record in this matter does not contain any information to support a finding that there is reason to believe that Mrs. McGlothern acted in any way improper, much less that she did so knowingly and willfully.

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Analysis

The Commission is well familiar with cases involving allegations of companies reimbursing employees and third parties for political contributions. In determining what action to take, the Commission typically looks at evidence whether the "conduit employees" knew they were being reimbursed; knew their actions were illegal; and/or participated in acts of additional complicity. Cases where the Commission has taken action against the "conduit employees" have typically involved matters where there was clear evidence of knowledge and complicity. See e.g. MUR 2893 (Westwood One); and MUR 3508 (New Enterprise Stone and Lime Co.). Many such cases include evidence of falsification of company records in which employees played a part. In other cases, where there was no evidence of additional complicity by the "conduit employees", the Commission has elected to take no action, albeit sometimes issuing letters of admonishment. See e.g. MUR 4286 (General Cigar Co.); MUR 4884 (Future Tech Int'l); and MUR 5187 (Mattel Inc.).

Robin McGlothern was never employed by Rooney or its affiliates. There is no evidence that Robin McGlothern was reimbursed for federal political contributions. It is unclear why the FEC believes that Robin McGlothern's husband may have been reimbursed for \$300.00 in federal political contributions made by her. There is no indication in the complaint or the September 24, 2003 FEC letter to Mrs. McGlothern to whom she made the alleged \$300.00 political contribution, or when she made it. There is no suggestion that Mrs. McGlothern knew or expected that she would be reimbursed for political contributions, let alone that he thought she was doing anything improper. There is certainly no evidence Robin McGlothern did anything to further a "reimbursement scheme" at a company at which she was not employed. Any federal political contributions made by Robin McGlothern were made because she believed in the candidacy of the persons to whose campaigns she contributed. The contributions were hers and not made on behalf of any other person, and she never was reimbursed for her contributions.

Conclusion

We cannot ascertain any basis on which the FEC determined that there is "reason to believe" Robin McGlothern violated the Act and we respectfully disagree with the FEC's finding in this regard. Accordingly, on her behalf, we cannot agree to pre-probable cause conciliation at this time. There is simply not enough information available that would support a factual basis for conciliation as to her. We urge, consistent with past FEC practices in similar cases with regard to people similarly situated to Mrs. McGlothern, that the FEC decide to take no further action as to Mrs. McGlothern, and that the FEC close this matter by reaching settlement and entering into pre-probable cause conciliation agreements with Centex-Rooney Construction Co. Inc. and Centex Construction Group Inc.

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Mrs. McGlothern reserves her right to submit in the future appropriate factual and legal materials relevant to the FEC's further consideration of this matter, and invites further dialogue.

If you have any questions, or require further information, please do not hesitate to contact us at 305-579-0110.

Sincerely,

Michael S. Pasano
Paul A. Calli

Counsel to Robin McGlothern

Enclosure

cc: Robin McGlothern

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SWORN STATEMENT

I, Robin McGlothern, being duly sworn, state and aver as follows.

1. My name is Robin McGlothern.
2. My spouse, DJ McGlothern, was employed as a Vice President at Centex Rooney Construction Company.
3. During the course of my adult life, I have made contributions to the campaigns of political candidates. I have contributed to campaigns at the local, state and federal level. I make political contributions because I believe in the candidates to whom I contribute campaign funds. My political campaign contributions are not guided by or related to the business of Centex. I never made a political campaign contribution because I was directed to do so. I was never advised that I would be reimbursed for political campaign contributions. To the best of my knowledge, I have never been reimbursed for campaign contributions that I have made.
4. With regard to the statement that I made a \$300.00 campaign contribution for which my spouse was reimbursed, I have no recollection regarding the political candidate to whom I allegedly made the \$300.00 federal political campaign contribution. I have no knowledge regarding when the alleged reimbursement occurred; the amount that was allegedly reimbursed; or the person that allegedly reimbursed the monies. I did not, however, receive monies as reimbursement for any political campaign contributions.
5. I did not ask anyone to submit my political campaign contributions

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for reimbursement. I have no idea whether my spouse advised any person that I made political campaign contributions.

6. I have no involvement with the affairs of Centex. I had no communication with Centex regarding political campaign contributions or reimbursements for same. The political campaign contributions that I made were of my own volition and had no relation to Centex. Stated differently, I contributed to political campaigns because I wanted to. I never expected reimbursement, and I never received reimbursement.

7. I have never knowingly or willingly been party to any violation of law.

FURTHER AFFIANT SAYETH NOT

Robin McGlothern
ROBIN MCGLOTHERN

STATE OF Florida)

COUNTY OF Sumter)

The foregoing instrument was acknowledged before me this 16th day of October, 2003 by Robin McGlothern, who is personally known to me or who has produced (Known to me) as identification and who did take an oath.

Margaret E. Miller
Notary Public, at Large
State of Florida

Margaret E. Miller
Print Name

Commission Seal:



Margaret E. Miller
Commission # DD 027774
Expires May 22, 2005
Bonded Through
Atlantic Bonding Co., Inc.

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